**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**CRIMINAL APPEAL No. 189 of 2001**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE A.M.KAPADIA**
**HONOURABLE MR.JUSTICE K.A.PUJ**

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

**RAJESHWARSING NATTHUSING - Appellant(s)**
**Versus**
**STATE OF GUJARAT - Opponent(s)**

==========

**Appearance :**
THROUGH JAIL for Appellant(s) : 1,MS SADHANA SAGAR for Appellant(s) : 1,
MR. K.T.DAVE, APP for Opponent(s) : 1,

==========

**CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA**

**and**

**HONOURABLE MR.JUSTICE K.A.PUJ**

**Date : 18.12.2006**

**ORAL JUDGMENT**

**(Per : HONOURABLE MR.JUSTICE K.A.PUJ)**

1. The Appellant / original accused has filed this appeal against the judgment and order of the learned Additional Sessions Judge, Rajkot dated 15.12.1998 rendered in Sessions Case no. 44 of 1998 convicting the present appellant / original accused for the offence punishable under Section 22 of the Narcotic Drugs & Psychotropic Substances, Act, 1985 (hereinafter referred to "as the Act") and sentencing him to suffer RI of 10 years and fine of Rs.1,00,000/- and in default thereof to undergo SI for 1 year.

2. The case of the prosecution as revealed in the complaint and as unfolded during the course of trial, is briefly stated as under.

   2.1 That on 16.1.1998 Mr. B.V.Jani, Police Sub-Inspector, 'B' Division Police Station, Rajkot City, has received a definite information that one person namely Rajeshvarising Shrinathansing, belonging to Bihar State, is coming to Kanaiya Hotel near Greenland Chokadi, Rajkot, by walking on foot in night hours. He has a large black bag in his hand. He has kept charas illegally with him. On receiving this information, he

conveyed this information to Mr. A.B.Yadav, Police Inspector of 'B' Division Police Station. In this respect, he has also intimated by a report, in writing, to the Assistant Police Commissioner, East Division, Rajkot City. The Police Inspector Mr. A.B.Yadav made entry, regarding this information at 0/15 hours on 17.1.1998 in the police station diary. On the basis of this information, the Police Head Constable - Mansukhlal Babulal of the Police Station was given report in writing to hand over the same to a Scientific Officer - Shri Gameti for accompanying in watch. He also asked Police Constable – Jasabhai Mandanbhai to call two persons in the Police Station for going in a watch in respect of the said information. So he called two panchas, and a preliminary panchnama was prepared between 0/45 to 1/00 hours in presence of the panchas on 17.1.1998. Thereafter, Police Inspector - Mr. A.B.Yadav, Scientific Officer - Mr. Gameti, 'D' Staff Head Constable - Mr. Gulabbhai Bachubhai, Police Constable - Gambhirsing Chandubha, Police Constable - Iqbal Mohammadbhai and two panchas started in a Government vehicle from the Police Station. Police Constable – Ashoksinh Chotubha, Police Constable – Rameshbhai Damjibhai and Police Constable – Jasabhai Mandanbhai were asked to follow the Government Jeep in a private vehicle. All of them have started from the Police Station. The Government as well as the

private vehicle arrived near Greenland Chokadi, and Police as well as Panchas got down there from. They scattered and stood by hiding collectively near Kanaiya Hotel. In the meantime, one person was coming by walking on foot at 1/30 hours from Kuwadava road octroi naka. As he came near, and he had a large black rexine bag in his hand, the said person was stopped. On asking his name and address in presence of panchas, he stated his name to be Rajeshvarsing Shrinathansing Rajput, aged 30 years, a resident of village Bumbui Tolla Badhan Karva, near Kohar Patti, Post Bagha, District Champaran, Bihar State. The Police Inspector – Mr. A.B.Yadav informed him orally and in writing that “an information is received that he was having charas illegally and so he is required to be checked”. Upon asking him as to whether he wanted to be searched or checked in presence of any gazetted officer or magistrate, the said person informed, in presence of the panchas, that he does not want to be checked by anybody. Then, on making search on person of Rajeshwarsing Shrinathansing Rajput, one T-Shirt, one Shirt, 2 Pants, 2 Nirma Soaps, 1 Lux soap, 1 colgate tooth brush, and moreover two dark brown coloured thin square pieces covered by light pink coloured plastic in a white plastic bag, were found from the large black rexine bag. The said 2 pieces were smelt by the panchas, and a peculiar type of smell was coming

out therefrom. The Scientific Officer Mr. Gameti made the chemical test of the said dark brown coloured pieces, and has opined that the same appears to be charas. Police Constable – Ashoksinh Chotubha was sent to call a weigher with a weighing scale for making exact weight of the said psychotropic substance. The said person viz. Soni Hasmukhrai Radhavjibhai, residing at Rajkot, weighed the 2 pieces of charas, found from Rajeshwarising Shrinathansing Rajput. One piece is of 221 grams in weight and the other piece is of 224 grams in weight, totaling to 445 grams charas in two pieces. Upon asking any pass or permit for the same from Rajeshwarising Nathunsing Rajput, he has denied. Therefore, the said 445 grams Charas, valuing Rs.4500/- found from him, was seized by drawing a panchnama. The cloth, soap, brush, etc. valuing Rs.250/-, found from the large black rexine bag with him, were also seized by drawing a panchnama.

2.2 The said Rajeshwarising Nathunsing Rajput aged about 30 years has committed an offence punishable under Section 22 of the Act by keeping illegally 445 grams charas valuing Rs.4500/- and so he was arrested at about 2:45 hours and accordingly he was informed about the muddamal seized from him and also informed the reasons for his arrest.

2.3 Thereafter Mr. B.V.jani, Police Sub-

Inspector has registered a complaint against the said Rajeshwarising Nathunsing Rajput for the offence punishable under Section 22 of the Act.

2.4 Pursuant to the registration of the offence, the investigation was put into motion. During the course of investigation, statements of the witnesses were recorded, panchnama of scene of offence was prepared, muddamal articles were recovered by drawing panchnama which were sent to F.S.L. for chemical analysis. After obtaining F.S.L. Report, since sufficient incriminating evidence was found against the accused, he was charge-sheeted in the Court of learned Additional Sessions Judge, Rajkot. The learned Additional Sessions Judge, Rajkot framed charge against the accused for commission of the offence punishable under Section 22 the Act.

2.5 The charge was read over and explained to the accused. As the accused has not pleaded guilty to the said charge, he was put to trial and tried by the learned Additional Sessions Judge, Rajkot at Palanpur in Sessions Case No. 44 of 1998.

2.6 To prove the culpability of the accused, prosecution has in all examined as many as 13 witnesses, details of which are as under:

| Srl. No. | Exhibit No. | Particulars | Page Nos. |
|---|---|---|---|
| 1 | 5 | PW-1 - Babu Panchabhai | 19-21 |
| 2 | 6 | PW-2 – Abhay Arvindbhai | 22-23 |
| 3 | 7 | PW-3 – Bakul Vitthalbhai | 24-28 |
| 4 | 10 | PW-4 -Jassa Mandanbhai | 35-37 |
| 5 | 11 | PW-5 – Hasmukh Raghavjibhai | 38-39 |
| 6 | 12 | PW-6 Asarshri Lal Babulal | 40-43 |
| 7 | 19 | PW-7 – Ashoksinh Chotubhai | 51-54 |
| 8 | 20 | PW-8 -Ganpatprasad Banarasi Prasad | 55-56 |
| 9 | 22 | PW-9 – Sukhiram Radubhai | 58-59 |
| 10 | 27 | PW-10 – Anil Gopalbhai | 64-65 |
| 11 | 30 | PW-11 – Ajitlaljibhai | 69-71 |
| 12 | 32 | PW-12 – Harpalsinh Ajitsinh | 74-76 |
| 13 | 38 | PW-13 – Ganshyam Hirabhai | 89-90 |

2.7 Prosecution has also produced several documents and relied upon the contents of the same, details of which are as under:

| Srl. No. | Exhibit No. | Type of Evidence | Page Nos. |
|---|---|---|---|
| 1 | 1 | Chargesheet | 8 |
| 2 | 8 | Panchnama | 29-32 |
| 3 | 13 | Extract from Station Diary. | 44 |
| 4 | 14 | Information given in writing for personal search. | 45 |
| 5 | 16 | Information given regarding arrest of the accused. | 47 |
| 6 | 17 | Report given regarding search operation. | 48-49 |
| 7 | 21 | Muddamal Receipt | 57 |
| 8 | 23-26 | Extracts from Station Diary. | 60-63 |
| 9 | 28 | Yadi issued with regard to receipt of Muddamal articles. | 66-68 |
| 10 | 29 | Yadi for sending Muddamal for chemical analysis | 69-70 |
| 11 | 31 | FSL Report | 72-73 |
| 12 | 34 | Complaint | 80-82 |

2.8 After recording of the evidence of the prosecution witnesses was over, the learned Additional Sessions Judge, Rajkot, explained the accused the circumstances appearing against him

in the evidence of the prosecution witnesses and recorded his further statement, as required under Section 313 of the Code. In his further statement, the accused denied the case of the prosecution by reiterating that he has been falsely implicated.

2.9 On appreciation, evaluation, analysis and close scrutiny of the evidence adduced by the prosecution, the learned Additional Sessions Judge, Rajkot has held that the prosecution has established beyond reasonable doubt that the charge leveled against the accused / appellant was proved and, therefore, the accused / appellant was held guilty of the offence punishable under Section 22 of the Act. Thereafter, the learned Additional Sessions Judge, Vadodara heard the accused and his advocate on sentence and looking to the gravity of the offence committed by the accused / appellant, and looking to the circumstances, the accused was sentenced to suffer rigorous imprisonment of 10 years and fine of Rs. 1 Lac and in default thereof, simple imprisonment of one year for the offence punishable under Section 22 of the Act.

3. Ms. Sadhana Sagar, learned advocate appearing for the appellant has submitted that the learned Additional Sessions Judge, Rajkot has committed an error on the face of the record by convicting the appellant / accused for the offence punishable under Section 22 of the Act. The

learned Additional Sessions Judge, Rajkot has misdirected himself in appreciating the evidence placed on record. The learned Additional Sessions Judge, recorded the findings which are not based on the evidence on record. The learned Sessions Judge should have appreciated the evidence and should have also held that the prosecution has failed to prove the offence against the accused beyond reasonable doubt. The learned Additional Sessions Judge has failed to consider the mandatory provisions of Sections 42, 50, 52, 55 and 57 of the Act. She has further submitted that there was a doubtful version of the prosecution and hence the conviction based on FSL report is required to be quashed and set aside. The substance found from the appellant / accused was not a substance covered by the provisions of the Act and hence it was wrongly considered as charas by the learned Additional Sessions Judge, Rajkot.

4. It was further submitted that the sealing procedure adopted by the raiding party and / or the investigation agency is very defective and the slip duly signed by the panchas as well as PI were not affixed, as required under law and in accordance with the judgments delivered by this Court.

5. In support of the above submission, Ms. Sadhana Sagar, the learned advocate of the appellant / accused has relied on the decision of this Court in the case of **Navinkumar @ Shambhuprasad @**

**Bapji Chimanlal Vyas V/s. State of Gujarat, 2006 (1) G.L.H. 409** wherein after considering earlier three decisions of this Court, namely, **(i)** Chandrakant Nagindas Modi V/s. State of Gujarat, 1989 (I) FAC 153, **(ii)** unreported decision dated 17.08.2001 rendered in Criminal Appeal No. 323 of 1996 filed by Jitendra @ Sanjaykumar Suryakant Desai against State of Gujarat and **(iii)** decision dated 07.05.2002 rendered in Criminal Appeal No. 287 of 1999 filed by Ganpatram Punmaram Vishnoi against State of Gujarat, the Court held that as per the law laid down by this Court, the slips bearing signatures of the panch-witnesses should be affixed on samples and thereafter seals should be applied so that if any attempt is made to tamper with sample, the slips affixed would get torn. On re-appreciation of evidence, the Court was satisfied that correct and fool-proof procedure of sealing was not resorted to by the Investigating Officer and possibility of tampering with muddamal was not ruled out at all. The Court has evaluated such deficiency in light of other discrepancies brought on record of the case and held that it was difficult to sustain conviction of the appellant – accused. The appeal was accordingly allowed and the appellant – accused was ordered to be released from jail forthwith unless his presence in jail was needed with reference to any other case.

6. Mr. K.T.Dave, the learned Additional Public Prosecutor appearing for State of Gujarat, on

the other hand, supported the order and judgment of the learned Additional Sessions Judge, Rajkot and submitted that there was no violation of any statutory provision and all necessary compliances were made by the raiding parties and/or investigating agency and there was no substance in the argument that the provisions contained in Sections 42, 52, 55 and 57 of the Act were violated. So far as sealing procedure is concerned, he has submitted that as per the panchnama drawn at the site, proper procedure has been adopted and it cannot be said that sealing procedure conducted by the raiding party was defective.

7. We have considered the submissions advanced by Ms. Sadhana Sagar, learned advocate appearing for the appellant / accused and Mr. K.T.Dave, learned Additional Public Prosecutor appearing for State of Gujarat at length. We have also undertaken a complete and comprehensive exercise of appreciating all vital features of the case and the entire evidence on record with reference to broad and reasonable probabilities of the case. We have also gone through the entire testimonial collections. We have applied our mind to the impugned judgment and order passed by the learned Additional Sessions Judge, Rajkot, convicting the appellant / accused.

8. Though several contentions were raised before the Trial Court and before this Court, we confine ourselves to deal with the strong

protest lodged against sealing procedure adopted by the prosecution. Even otherwise, we are not impressed by the other contentions raised by Ms. Sadhana Sagar, the learned advocate of the appellant / accused. The main grievance was that the identity of the muddamal and the samples sent to the F.S.L. is not established. There was a possibility of tampering with the contents of the samples. The samples were not kept in safe and proper custody and the sealing procedure was absolutely defective. This contradiction of the evidence in the witnesses with regard to the sealing procedure and the possibility of the tampering of the contents of sample cannot be ruled out.

9. To examine and appreciate the aforesaid contention, relevant provisions in the Act or Rules made thereunder, touching this subject matter are required to be looked into.

10. Section 55 of the Act deals with Police to take charge of articles seized and delivered. It provides that Officer in charge of police station shall allow any officer depositing the seized articles to affix his seal to such articles or to take samples of and from them and all samples so taken shall also be sealed with a seal of the officer-in-charge of the police station. Except this, no provision seems to have been made in the present Act and Rules framed thereunder regarding mode of taking and sealing of the sample, mode of assigning the same to

chemical examiner and their chemical examination or even touching the above matters. However, the Central Government issued Standing Instruction / Orders. Standing Order No. 1/88 dated 15.03.1988, Standing Order No. 2/88 dated 11.04.1988 and Standing Order No. 1/89 dated 13.06.1989 are required to be looked into. Standing Instruction 1/88 speaks about procedure regarding drawl, storage, testing and disposal of samples from seized narcotic drugs and psychotropic substances. Standing Order No. 2/88 deals with receipt, custody, storage and disposal of seized/confiscated narcotic drugs and psychotropic substances. Standing Order No. 1/89 relates to general procedure for sampling, storage etc. Standing Instruction / Order No. 1/88 inter alia provides as under :-

(i) If the drugs seized are found in packages/containers, the same should be serially numbered for purpose of identification etc.

(ii) Samples must be drawn on the spot of recovery in duplicate, in the presence of search (panch) witnesses and the person from whose possession the drug is recovered.

(iii) The quantity to be drawn in each sample should be 5 gms in respect of all narcotic drugs and psychotropic substances except in the cases of opium, ganja and charas, hashish where a quantity of 24 gms in each case is required. The same quantity should be taken for the duplicate samples also. The seized drugs in the packages/containers should be well mixed to make it homogeneous and representative before the sample in duplicate is drawn.

(iv) In the case of seizure of a single

package/container one sample in duplicate is to be drawn. In case of seizure of more than one packages/container one sample in duplicate from each package/container should be drawn.

(v) All samples must be drawn and sealed in the presence of the accused, panchnama witnesses and seizing officer and all of them shall be required to put their signatures on each sample. The official seal of the seizing officer should also be affixed. If the person from whose possession the drugs have been recovered, wants to put his own seal on the sample, the same may be allowed on both the original and duplicate of each sample.

(vi) The sample in duplicate should be kept in heat sealed plastic bags. The plastic bags should be kept in a paper envelope and properly sealed. Such sealed envelope should be marked as original and duplicate.

(vii) The samples should be dispatched to the respective laboratories under the cover of a Test Memo which shall be prepared in triplicate in proforma NCB-1.

11. Despite the aforesaid Standing Orders / Instructions, the proper procedures are not being followed by the Investigating Agency and cases have come up before the Court. In the case of **Chandrakant Nagindas Modi V/s. State of Gujarat, 1989 (I) FAC 153**, this Court has taken the view that the muddamal was not properly sealed and there was all possibility of substituting the substance. Coupled with this, the fact that the muddamal remained with the police for more than two months raises a doubt. The prosecution has, therefore, failed to

establish the offence beyond reasonable doubt against the appellant. The Court further held that this aspect has escaped the notice of the Learned Trial Judge and in view thereof, the Court allowed the appeal and acquitted the appellants.

12. In **Criminal Appeal No. 323 of 1996, in the case of Jitendra @ Sanjaykumar Suryakant Desai V/s. State of Gujarat** decided on 17.08.2001, the Court has taken the view that the contention regarding laxity in following the procedure relating to sealing of the seized contraband articles has some substance. After considering the evidence of the Investigating Officer and Panch witnesses, the Court has observed that after drawing the samples, at the time of sealing the samples as well as the remainder of the contraband seized, the slips containing signatures of the Panch witnesses and the Police Officer were placed inside the bags, thereafter the bags were stitched and max seals were applied. There is no dispute that the Seal remains in custody of the police. The possibility of tampering with the muddamal at a later stage and then again resealing the same by the Investigating Agency cannot be ruled out. The very purpose behind carrying out the search, taking of sample and sealing in presence of Panch witnesses is to ensure that there is no scope for any mischief in procedure required to be followed. At the time of sealing, slips containing signatures of Panch

witnesses as well as the Investigating Officer are affixed on the articles seized and a seal is applied over it, so that, in case of any attempt for tampering with the article seized, the seal would be broken or the slip would be torn which would immediately reveal such an attempt. If the slip is put inside as was done in that case, the possibility of tampering cannot be ruled out. Under the circumstances, the Court held that the procedure followed for sealing in that case cannot be said to be proper and free from any possibility of tempering. The procedure,therefore, cannot be said to be beyond the scope of any reasonable doubt and in that event, benefit must go to the accused.

13. This Court has again considered this issue in **Criminal Appeal No. 287 of 1999 in the case of Ganpatram Punmaram Vishnoi V/s. State of Gujarat** decided on 07.05.2002 Additional Public Prosecutor, as an officer of the Court, has pointed out in the case that no proper sealing has been done by the PSO and, therefore, possibility of tampering with the muddamal cannot be ruled out. The Court took the view in that case that the slip signed by the panchas as well as the PSO, which was kept along with the polyethylene bag is required to be affixed at the outer portion below the wax seal of the police station. If the police keeps the slip signed by the panchas and the PSO along with the sample muddamal and affix the seal of the police station at the outer portion of the bag,

possibility of tampering the muddamal cannot be ruled out as the official seal always remains with the concerned police station. The Court, therefore, held that it is obligatory on the part of the police to see to it that the slip signed by the panchas as well as the concerned Officer is affixed at the outer portion of the sample bag below the official seal of the police station. This procedure will totally rule out the possibility of any tampering with the sample muddamal. This has not been done in that case and hence, the Court held that the procedure adopted by the PSO cannot be said to be free from any doubt and the possibility of the tampering also cannot be ruled out. The Court held that in any case, the benefit must go to the accused.

14. All the aforesaid three judgments have been referred to and relied upon by this Court in its later decision in the case of **Navinkumar @ Shambhuprasad @ Bapji Chimanlal Vyas V/s. State of Gujarat, 2006 (1) G.L.H. 409** and held that the slips bearing signatures of the panch-witnesses should be affixed on samples and thereafter seals should be applied so that if any attempt is made to tamper with sample, the slips affixed would get torn.

15. This very Bench has considered this issue regarding sealing procedure in Criminal Appeal no. 1366 of 1999 with Criminal Appeal no.34 of 2000 decided on 21.9.2006, wherein all the

previous judgments were referred to and relied upon and the appellant / accused was acquitted on the ground that the sealing procedure was not properly followed by the prosecution.

16. If we consider the procedure laid down in the aforesaid Standing Instructions / Order as well as the ratio of above referred four different judgments of this Court, in light of the facts found from the deposition of the Panch witnesses, Police witnesses and F.S.L. Report as well as from the documents produced on record, we come to the conclusion that in the present case also, proper procedure for sealing has not been followed by the prosecution.

16.1 **PW-1** – Babu Panchabhai – Exh. 5 is the panch witness and he turned hostile and has not supported the case of the prosecution.

16.2 **PW-2** – Abhay Arvindbhai – Exh. 6 is also a panch witness. He turned hostile and has not supported the case of the prosecution.

16.3 **PW-3** – Bakul Vitthalbhai – Exh. 7 is Police Sub-Inspector and one of the members of the raiding party. He has deposed in his deposition that in the presence of panch witnesses, both the pieces of charas were kept in white plastic bag. In that white plastic bag a slip duly signed by panch witness was also kept. That white plastic bag was packed in brown paper and it was wrapped by cotton thread.

A Slip duly signed by panch witness was kept thereon and thereafter seal of PI, Rajkot was affixed along with max seal.

16.4 **PW-4** – Jassa Mandanbhai – Exh.10 has stated in his deposition that muddamal charas was packed in plastic bag and thereafter the said plastic bag was wrapped with brown paper and slip duly signed by panch witness was kept thereon and it was duly sealed.

16.5 **PW-5** – Hasmukhbhai Raghavji – Exh. 11 is the person who has weighed with the help of his weighing scale, the muddamal article. He turned hostile and he has not supported the case of the prosecution.

16.6 **PW-6** – Asharshrilal Babulal – Exh.12 has stated in his deposition that muddamal article was seized for investigation after affixing seal duly signed by the panch witnesses as well as by him and after affixing the seal of PI of Rajkot.

17. As against the evidence of the aforesaid witnesses, FSL report says that sealed paper parcel was received which contained plastic bag having two other plastic bags. Each plastic bag contained dark brown coloured packet mark A and B. Parcel also contained panch slip having signature of panch witness as well as the accused. From this description found in FSL report, it appears that the slip was loosely

kept in the parcel and it was not affixed on the parcel as required under the law. Thus, there is major contradiction in the FSL report as well as prosecution witnesses. The sealing procedure adopted is very defective and possibility of tampering cannot be ruled out.

18. Because of the material contradictions between the deposition of the prosecution witnesses regarding sealing procedure and FSL report, this Court is of the view that there is possibility of tampering with the contents of the samples before they were sent to FSL for analysis. When there is possibility of tampering with the contents of the samples, no reliance can be placed on the expert opinion of the report of the FSL and it cannot be said that the contraband article were seized from the possession of the accused and the sample there from was taken and that the sample was sent for chemical analysis and that the report of the analysis as expert is regarding the same. When it is so, then the report deserves to be discarded in toto. Standing Instructions issued by the Central Government are violated as it has not come in evidence from the deposition of all the prosecution witnesses that the accused have also signed the slips which were found in the cloth bags containing the samples. In light of these discrepancies, it is very unsafe to sustain the conviction order. The appellant / accused is in jail for more than 8 years. It is very unfortunate that the appeal could not be

heard earlier.

19. In peculiar facts of the present case and in light of the decisions referred to herein above and the principles laid down therein, this Court is of the view that the conviction order passed against the appellant / accused cannot be sustained. The Appeal, therefore, succeeds. The judgment and order of the learned Additional Sessions Judge, Rajkot passed in Sessions case no. 44 of 1998, convicting the appellant / accused for the offence punishable under Section 22 of the Act and sentencing his to rigorous imprisonment of 10 years and fine of Rs. 1 Lacs and in default thereof, simple imprisonment for one year for commission of such offence is hereby quashed and set aside. The appellant / accused is hereby acquitted from the charge leveled against him. The respondent – State of Gujarat and the jail authority is hereby directed to release the appellant / accused from jail forthwith unless his presence is required in connection with any other case. Amount of fine, if paid shall be refunded to him.

20. This Appeal is accordingly allowed.

(A. M. KAPADIA, J.)

(K.A. PUJ, J.)

Jayanti*